

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2000-366-A - ORDER NO. 2001-195

MARCH 2, 2001

IN RE: Application of Chem-Nuclear Systems, LLC, a Division of GTS Duratek, Inc., for Identification of Allowable Costs)))))	ORDER GRANTING MOTION FOR A PROTECTIVE ORDER AND PROTECTIVE ORDER
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This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Motion from the South Carolina Budget and Control Board (the Board) for an order imposing a protective or confidentiality agreement upon Chem-Nuclear Systems, LLC, a Division of GTS Duratek, Inc. (Chem-Nuclear or the Applicant) and the Board. Chem-Nuclear, in accordance with Commission Order No. 2000-591 (July 20, 2000), filed an Application with the Commission for identification of the Applicant's allowable costs for the operation of its regional low-level radioactive waste disposal facility in Barnwell, South Carolina. After the Board served a set of discovery requests on Chem-Nuclear, the Board, anticipating that the Applicant might withhold or attempt to withhold responses to certain discovery requests on the grounds that the responses included confidential information, sent a proposed Consent Protective Order to Chem-Nuclear covering confidential information that might be produced during the discovery process. Chem-Nuclear rejected the Board's proposed Consent Protective Order. Thereafter, Chem-Nuclear served proposed confidentiality agreements on the

Board; however, these proposed agreements were rejected by the Board. Oral arguments on the Board's Motion were heard on February 15, 2001, at 11:30 a.m., in the Commission's Hearing Room. For the reasons discussed below, we find that certain discovery requests in this matter may require the release of confidential information; therefore, a Protective Order should be issued in this case.

DISCUSSION

This Commission has the authority to issue a protective order in accordance with the South Carolina Rules of Civil Procedure and South Carolina case law. See 26 S.C. Code Ann. Regs. 103-854 (Supp. 2000). Rule 26(c), SCRCP states, "Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending...may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense...." In Hamm v. S.C. Public Service Com'n, 312 S.C. 238, 241, 242, 439 S.E.2d 852, 854 (1994), the Supreme Court held that the Commission properly issued a protective order after it weighed whether "the party seeking the protective order has met its burden of showing good cause by alleging a particularized harm [and] the party seeking the discovery... show[s] that the information sought is both relevant and necessary to the case." In the instant case, the Board acknowledges in its Motion for a Protective Order that the Board anticipated that Chem-Nuclear would withhold or attempt to withhold responses to certain discovery requests on the grounds that the responses might include confidential information or business trade secrets. We believe that if the Board did not think that the responses which contain confidential information or business

trade secrets should be protected, the Board would not have sent a consent protective order to the Applicant nor would the Board have filed a Motion for a Protective Order with this Commission. The Board's actions demonstrate its acknowledgement that confidential information disseminated in this docket should be protected.

During the oral arguments, the Board stated that it is seeking responses regarding four matters from Chem-Nuclear which the Applicant claims are confidential. These four matters are trench construction, slit trench construction, waste inspection procedures, and salaries of disposal personnel. We find that the Applicant's responses to the Board's requests are relevant and necessary; however, these responses may contain commercially sensitive, intellectual, proprietary information and therefore, the responses should be subject to a protective order. This Order applies to all the parties in this case and we anticipate that future discovery requests made by the parties may require the production of confidential information. Therefore, the scope of this Order covers not only the information requested by the Board during the oral arguments but also any other relevant and necessary responses to discovery requests which fall into the category of "confidential information" as defined in this Order.

We find that the confidential responses that are produced by the Applicant will allow the parties to fully prepare for the hearing in this matter. A protective order is necessary in this case to protect the interests of all parties. We hereby order that any documents, information, and material requested by parties in this case deemed confidential by the Applicant, Chem-Nuclear Systems, LLC, a Division of GTS Duratek,

Inc. (Chem-Nuclear or the Applicant), and produced by the Applicant, will be subject to the following terms and conditions:

1. "Confidential Information" shall mean all documents, information, and other things (both tangible and intangible) requested from the Applicant in the above-referenced matter for which the Applicant has a good faith reason, based on business interests, that those documents, information, and other things are confidential and constitute trade secrets and commercial or financial information which are privileged, confidential or proprietary. In order to assert a claim that a particular document constitutes Confidential Information, the Applicant shall clearly mark any such document as "**CONFIDENTIAL INFORMATION.**"

2. The term "document" shall mean all written, recorded or graphic material, and non-paginated items such as computer tapes, diskettes, and CD ROMs produced by the Applicant in this docket proceeding.

3. Access to documents claimed by the Applicant to be Confidential Information shall be made available to all parties in this proceeding pursuant to the South Carolina Rules of Civil Procedure and the terms of this Protective Order. Confidential Information shall be restricted by the parties to the following persons: counsel for the parties, representatives of the parties in this case, witnesses and experts in this matter, the Public Service Commission and its authorized staff, including certified court reporters. Confidential Information will be used solely for the purposes of the proceedings in Docket No. 2000-366-A and will not be used for any other purpose, including consultation with competitors of the Applicant, or marketing of any services of any

person concerning, or related to the treatment, storage or disposal of low-level radioactive waste.

4. Upon termination of this matter, all copies of Confidential Information furnished by the Applicant to the parties in this case, or other copies made by anyone of Confidential Information, together with all originals, reproductions and notes reproducing such Confidential Information, shall be returned to counsel for the Applicant or destroyed, together with a letter from counsel for the party to Applicant's counsel confirming the same. The Public Service Commission may retain such confidential information as was placed into the record of the case during any hearing on this matter. Such information will be retained by the Commission as is other confidential material.

5. Nothing in this Order shall constitute a limitation on any Party of Record and/or Intervenor regarding the use of the Confidential Information protected herein for any purpose in taking depositions or at any hearing pursuant to the governing rules of procedure, evidence, and substantive law.

6. The provisions of this Protective Order shall not terminate at the conclusion of the proceedings in Docket No. 2000-366-A. The Applicant is entitled to enforce this Protective Order against the parties of record before the Commission, pursuant to the Commission's rules and regulations, or before any other judicial authority having competent jurisdiction for any breach or threatened breach of this Protective Order. For purposes of enforcing this Protective Order, proper venue shall be Columbia, South Carolina.

7. Nothing in this Protective Order shall be construed to prevent the Applicant from objecting to discovery that it believes to be otherwise improper under the South Carolina Rules of Civil Procedure and other applicable law. Further, nothing in this Protective Order shall prevent the Applicant from filing any motions, pursuant to the South Carolina Rules of Civil Procedure or other applicable law, concerning the manner in which Confidential Information may be designated or disclosed at a hearing in Docket No. 2000-366-A.

8. If any provision of this Protective Order is violated by the parties in this matter, remedies for noncompliance will be made available in accordance with South Carolina law.

9. The Certificate of Authorized Docket Representative, which is attached to this Order as Exhibit I, shall be executed by the party requesting the Confidential Information and sent to counsel for the Applicant prior to the release of any Confidential Information.

10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

EXHIBIT I

STATE OF _____

COUNTY OF _____

CERTIFICATE OF AUTHORIZED DOCKET REPRESENTATIVE

I, _____, have been given a copy of the Protective Order issued in this proceeding, and I certify that I have read and understand the Protective Order. Further, I agree to be bound by the terms of the Protective Order. I understand that the contents of the Confidential Information, and any notes, memoranda, or any other form of information regarding or derived from Confidential Information will not be disclosed to anyone other than in accordance with the Protective Order and shall be used only for the purposes of the proceedings in SCPSC Docket No. 2000-366-A.

Signature:

Date of Execution: _____

(Type or print below)

Name: _____

Title: _____

Company: _____

Address: _____